

1                   (Discussion off the record between the  
2 defendant and his counsel.)

3           THE COURT:   Mr. Soden.

4           THE DEFENDANT:   Yes, sir.

5           THE COURT:   Do you know of any legal cause  
6 why the Court should not now pronounce sentence?

7           THE DEFENDANT:   No, Your Honor.

8           THE COURT:   Thank you.

9           All right.   Look, I noted that it was  
10 described that Mr. Soden was frail and elderly.

11          THE DEFENDANT:   Yes, Your Honor.

12          THE COURT:   I do believe he's frail, but  
13 he's a year younger than I am, and I didn't  
14 particularly like Dr. Barnett's testimony saying that  
15 I was elderly.   I don't know.   I guess the age when  
16 we become elderly all changes, and it's -- changes  
17 from human to human is what I would say.

18          THE DEFENDANT:   Thank you, Your Honor.

19          THE COURT:   Mr. Lee, I have looked at the  
20 statute and your motion for dispositional and  
21 durational departure.

22                 I do find that the victims in this case in  
23 particular were more an aggressor than a participant  
24 in the criminal conduct.   They were certainly selling  
25 things monetarily that it's against the law for even

1       an adult to sell. I also find that at some point  
2       during this conduct, they decided to involve others  
3       in a robbery of Mr. Soden because it became apparent  
4       to them they could get money easier that way.

5               I do find that Mr. Soden does have physical  
6       and mental impairments and lacked substantial  
7       capacity for judgment when the offense was committed.

8               I do find that the degree of harm or loss  
9       attributed to the current crime of conviction was  
10      significantly less than the typical for such an  
11      offense of young children. Normally, I would think  
12      that the harm that would be done by this kind of  
13      conduct would be very, very substantial. I'm not  
14      convinced that that is so in this case.

15              Mr. Soden's age of 67 years is something  
16      that I'm considering in making this decision.

17              I am not going to grant a dispositional  
18      departure, but the Court does find substantial and  
19      compelling reasons that the Court has just set forth  
20      for a downward durational departure.

21              I've given this a lot of thought during the  
22      last couple of hours, and, frankly, I did earlier,  
23      when I was reading Dr. Barnett's report and the VA  
24      report, and what I've decided to do is to sentence  
25      Mr. Soden to 70 months in the Department of

1 Corrections' custody. He can earn 15 percent good  
2 time off of that 70 months. There would be  
3 registration required for 25 years.

4 That is a substantial departure from the  
5 166 months, Mr. Lee, but I want Mr. Soden to know  
6 that he does have the right to appeal my sentence to  
7 the Court of Appeals of the State of Kansas by filing  
8 a notice of appeal within 14 days. Further, he has  
9 the right to expunge his arrest and conviction in  
10 this matter once he's off parole in this matter.

11 Court costs are assessed at \$193; DNA  
12 database fee is \$200; attorney fees are waived.

13 Mr. Soden is not --

14 THE DEFENDANT: Yes.

15 THE COURT: -- eligible until he's off of  
16 parole to serve on a jury, hold public office, or --  
17 what's the other one?

18 THE CLERK: Vote.

19 THE COURT: Vote. Yeah. All right.

20 Ms. Lowdon, anything else you want to take  
21 up at this time?

22 MS. LOWDON: I did want to clarify a couple  
23 of things.

24 You had indicated that you noted that the  
25 victims were the aggressor. Being as this is for the

1       electronic solicitation of the 13-year-old, is she  
2       one of the victims that you are finding to be an  
3       aggressor?

4               THE COURT:   Yes.   I think that a  
5       13-year-old who offers what she offered for money is  
6       certainly an aggressor, particularly since she's the  
7       one that had to travel to Mr. Soden.   Mr. Soden did  
8       not travel to her is the way I understood this.

9               MS. LOWDON:   And then you indicated that  
10      the degree of harm was less in regards to the  
11      victims.   Since there was no testimony in that today,  
12      are you going off Mr. Lee's statements about the CAC  
13      interview?

14              THE COURT:   That's part of what I'm going  
15      off of.   The other thing I'm going off of is the  
16      victims didn't appear here to testify or to make  
17      their statements, nor have they made any statement to  
18      Court Services, as I understand it.

19              MS. LOWDON:   I guess, for purpose of the  
20      record, I would just indicate that their lack of  
21      participation does not necessarily support a finding  
22      that they have suffered less harm.

23              THE COURT:   That's something that you can  
24      note and take up on appeal if you so desire,  
25      Ms. Lowdon.

1 MS. LOWDON: Thank you.

2 THE COURT: Anything else?

3 MS. LOWDON: No.

4 THE COURT: Mr. Lee?

5 MR. LEE: No, Your Honor.

6 MS. LOWDON: Did you advise of his right --  
7 of his requirement to register?

8 THE COURT: I did. Twenty-five years is  
9 what I found. I think that's what Court Services had  
10 indicated.

11 MS. LOWDON: Thank you.

12 MS. CLARK: I would like to note he is --  
13 the dates have changed, so he should be credited 261  
14 days. It's incorrect --

15 THE COURT: Right. But I think the  
16 sentence begins date stays the same, March 19th of  
17 2018. But, yeah, we were originally set for  
18 sentencing September 28th, so that certainly has  
19 changed.

20 Anything else?

21 MS. LOWDON: No.

22 MR. LEE: No, Judge.

23 THE COURT: We're adjourned. Thank you.

24 MR. LEE: Thank you.

25 (End of proceedings.)

CERTIFICATE

STATE OF KANSAS       )  
                              ) ss.  
LEAVENWORTH COUNTY    )

I, Joellen M. Van Tuyl, a Certified Court Reporter for the State of Kansas and the regularly appointed, qualified, and acting official reporter for the First Judicial District of the State of Kansas, do hereby certify that, as such official reporter, I was present at and reported the above and foregoing proceedings.

I further certify that the foregoing transcript constitutes a true and correct transcript of my shorthand notes, all to the best of my knowledge and ability.

SIGNED AND ELECTRONICALLY FILED WITH THE CLERK OF THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS, this 14th day of January, 2019.

/s/ Joellen M. Van Tuyl, CCR, RPR  
Official Court Reporter  
Supreme Court Certification #1655